

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO RHODA AND TRIPON CABIGAS, DEFENDANTS-APPELLANTS.

G.R. No. 58613. June 24, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Circuit Criminal Court, 14th Judicial District at Cebu City in Criminal Case No. CCC-XIV-2293, convicting Ernesto Rhoda and Tripón Cabigas of the crime of MURDER, and sentencing them to reclusion perpetua with all the accessory penalties of the law, to indemnify the heirs of the deceased Arnold Babiera in the sum of P15,000.00, and to pay the costs.

The information filed against the accused-appellants alleged:

"The undersigned Assistant Fiscal of the City of Cebu accuses Mario Eran, Ernesto Rhoda, Tripón Cabigas of the crime of Murder, committed as follows:

"That on or about the 20th day of December, 1980, at about 11:00 o'clock p.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping one another, one of whom was armed with a knife, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there attack, assault and use personal violence upon one Arnold Babiera, by accused Mario Eran stabbing said Arnold Babiera on the chest several times, while the two other accused, Ernesto Rhoda and Tripón Cabigas held said Arnold Babiera on both hands, thus inflicting upon said Arnold Babiera the following injuries:

"HEMORRHAGE, SEVERE, SEC. TO STAB WOUNDS OF THE CHEST",

as a consequence of which said Arnold Babiera died an hour later." (Rollo, p. 4)

The facts of this case are found in the decision of the trial court. They are:

.....

"In the trial on the merits that ensued, the prosecution established through the testimonies of Felix Villaro and Crisaldo Resurreccion that a benefit dance was held at Crossing, Cabreros Street, Cebu City, in the evening of December 20, 1980. Attending the dance, among others, were: Arnold Baviera, Ronald Cabase, Crisaldo Resurreccion, Felix Villaro, Mario Eran, and Ernesto Roda.

"Felix Villaro and Arnold Baviera, having decided to go home, left the dancing place at 11:00 P.M. Famished after tripping the light fantastic, they bought bananas for snacks. When they saw their friends, Crisaldo Resurreccion and Ronald Cabase, they crossed the street to join the duo. They gave the two some bananas and Arnold Baviera sat on a car parked alongside the road.

"Suddenly and unexpectedly, Mario Eran, in the company of Tripón Cabigas and Ernesto Roda, approached Arnold Baviera and slapped the latter four times. Caught by surprise, Arnold Baviera wrestled with his attacker in an effort to fight back. He was brought to the middle of the street by reason of the struggle. Seeing that

Mario Eran was beaten in the fight, badly mauled and beaten as Mario Eran turned out to have been, Trifon Cabigas and Ernesto Roda decided to help finish him. Cabigas held Baviera's right arm, while Ernesto Roda held Baviera's left arm. With Arnold Baviera clipped of his wings, so to speak, Mario Eran stabbed Arnold Baviera at the back twice. The knife Mario Eran used, Exhibit 'E', was left sticking to the body of Arnold Baviera even as the trio ran from the scene. Ronald Cabase informed the Barangay police and somehow the parents of Arnold Baviera were notified.

"Barangay Policeman Alejandro Delfin, acting on the report of Ronald Cabase, gave chase. He caught only Trifon Cabigas. When he searched the latter, a homemade revolver was found on his person. Consequently, aside from this murder charge, Trifon Cabigas stands charged with the crime of illegal possession of firearm in a separate case.

"On the part of the accused Ernesto Roda, it is the essence of his defense that, instead of holding Baviera so that Mario Eran can stab Baviera with facility, he simply tried to separate Arnold Baviera and Mario Eran. Mario Eran was badly beaten and so, was hanging on to Baviera so that he will not fall to the ground from sheer exhaustion. Mario Eran, allegedly not heeding his call for peace, rushed instead to Arnold Baviera with a knife and stabbed Arnold Baviera twice at the back. He did not help Mario Eran allegedly because he could not bear the sight of blood.

"Rather significant is the fact that, on February 11, 1981, Ernesto Roda surrendered himself to the police. Surrendering as he did, he did not give a statement to the police.

"The accused Trifon Cabigas, in denying any participation in the killing of Arnold Baviera, asserts the alibi that, at the time of the killing took place, he was in the store of his cousin, Emma Dayanan, 100 meters away from the crime scene." (Decision, pp. 3-5, Rollo, p. 6)

A postmortem examination of the victim's body was performed by Dr. Tomas P. Refe, a medico legal officer of the National Bureau of Investigation. The Necropsy Report states:

"Pallor, lips and nailbeds.

"Contuse-abrasions: 0.6 x 1.5 cms., superciliary region, right side; 1.0 x 2.0 cms., postero-lateral aspect, elbow region, right.

"Wounds, stab gaping:

1) Elliptical shape, edges clean cut, running downwards and laterally, 3.0 cms., with the upper extremity blunt and lower extremity sharp; located at the posterior aspect, lower chest wall, left side, level of the 7th rib, 12.0 cms. from the posterior median line; directed forwards, upwards, and laterally; involving the skin and soft tissues, non-perforating; then communicating with another wound, gaping, at a depth-distance of 6.0 cms., elliptical shape, edges clean cut, running downwards and anteriorly, 1.5 cms., with the upper extremity blunt and lower extremity sharp; located at the lateral aspect, chest, left side, level of the 4th rib, 20.0 cms. from the posterior median line;

2) Elliptical shape, edges clean cut, running downwards and anteriorly, 1.0 cm., with the lower extremity sharp and upper extremity blunt; located at the medial aspect, upper third arm, left, 18.0 cms., above the left elbow joint; directed forwards, upwards and laterally; involving the skin and soft tissues, with the depth of 4.0 cms.;

3) Elliptical shape, edges clean cut, running downwards and medially, 3.5 cms. with the upper extremity blunt and lower extremity sharp; located at the posterior aspect, lower chest wall, right side, level of the 10th intercostal space, 1.5 cms. from the posterior median line; directed forwards, upwards and medially; involving the skin and soft tissues, cutting the inferior vena cava, grazing the lower lobe, lung, right side, then perforating the pericardium and piercing the right ventricle of the heart, with the depth of 16.0 cms.

Hemopericardium, 250 cc.
Hemothorax, right side, 800 cc.
Heart chambers, almost empty of blood.
Lungs, congested and edematous; cut sections show reddish congested cut surfaces.
Brain and other visceral organs, slightly pale.
Stomach, one-half (1/2) filled with partly digested rice and other food particles.

CAUSE OF DEATH: Hemorrhage, severe, secondary to stab wounds of the chest."

Only Ernesto Rhoda and Trifon Cabigas were arrested to face trial. Mario Eran evaded arrest up to the time of trial in the lower court.

On March 31, 1981, the lower court rendered its decision finding accused Ernesto Rhoda and Trifon Cabigas guilty of murder as charged. The dispositive portion reads:

"WHEREFORE, the Court finds the accused Ernesto Roda and Trifon Cabigas guilty beyond reasonable doubt of the crime of MURDER described in the aforecited information. There being neither mitigating nor ordinary aggravating circumstances adduced and proven, the accused Ernesto Roda and Trifon Cabigas should be, as they are, hereby sentenced to the penalty of RECLUSION PERPETUA, with accessory penalties of the law; to indemnify the heirs of the deceased Arnold Baviera in the sum of P15,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate costs." (Decision, p. 8)

According to the accused-appellants, the trial court erred:

I

IN HOLDING THAT CONSPIRACY WAS PROVEN BETWEEN MARIO ERAN AND THE APPELLANTS WHEN THE PROSECUTION EVIDENCE ITSELF SHOWED THAT THE ACT OF KILLING BABIERA WAS PERPETRATED BY THE FORMER ALONE AND WITHOUT ANY OVERT CRIMINAL INTERCESSION BY THE LATTER.

II

IN ENTIRELY DISCREDITING APPELLANTS' EVIDENCE WHICH APPEARED MORE IN ACCORD WITH HUMAN EXPERIENCE AND OBSERVATION AND WAS, THEREFORE, MORE PROBABLE THAN THAT GENERATED BY THE EVIDENCE FOR THE PROSECUTION; MOREOVER, IT DISCARDED SUCH EVIDENCE WITHOUT DELVING FURTHER SIMPLY BECAUSE THEIR DEFENSE WAS THAT OF DENIAL AND ALIBI.

III

EVEN IF GRANTING, ARGUENDO, THE APPELLANTS WERE EQUALLY GUILTY WITH MARIO ERAN IN THE KILLING OF BABIERA YET THE CRIME COMMITTED WAS NOT MURDER BUT ONLY HOMICIDE.

IV

WHEN, UNDER THE SAME PREMISE, IT FAILED TO APPRECIATE IN FAVOR OF APPELLANT RODA THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER WHEREOF THE PROSECUTION FAILED TO CONTROVERT.

V

IN NOT ACQUITTING BOTH APPELLANTS OF THE CRIME CHARGED UPON FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT THERETO BEYOND REASONABLE DOUBT.

Relative to the first assignment of error, the appellants argue that there was no conspiracy between themselves and accused Mario Eran when the latter stabbed and killed the deceased Arnold Babiera. According to the appellants, they did not approach the deceased Arnold Babiera together with accused Mario Eran; they did not hold the hands of the deceased so that the latter could not fight back (against Mario Eran); they did not maintain a "vise like hold" on the deceased so that he could be stabbed with impunity by accused Mario Eran; appellant Cabigas was not all the while armed with a homemade revolver and the finding of the lower court that he was ready for any eventuality is wrong; and Mario Eran and the appellants did not run away together after the commission of the crime.

The above arguments have no merit. We have carefully examined the records of the case and agree with the findings of the lower court that conspiracy exists. The testimony of the witnesses prove conspiracy beyond reasonable doubt.

Direct examination of Felix Villaro:

"Q.

You said that that time that you were already by the side of the car Mario Eran approached you, can you tell the Court what happened when Mario Eran approached you?

"A.

He slapped Arnold Babiera four times.

"Q.

What happened after he slapped Arnold Babiera four times?

"A.

He grappled with Mario Eran.

"Q.

And the two, Mario Eran and Arnold Babiera were grappling against each other?

"A.

Yes, sir.

"Q.

What happened while they were grappling?

"A.

Tripon Cabigas and Ernesto Rhoda approached and held him. (TSN, February 18, 1981, pp. 133-134)

.....

"Q.

When the two were holding his hands where was Mario Eran at that time?

"A.

He went around behind and stabbed Arnold Babiera twice.. (TSN, February 18, 1981, p. 134)

.....

"COURT (to witness)

"Q.

You said that Trifon Cabigas and Ernesto Rhoda were holding the hands of Arnold Babiera when Mario Eran stabbed Babiera, who was hold (sic) the right hand or arm of Arnold Babiera?

"A.

Trifon Cabigas.

COURT-

"Q. Who was holding the left hand?

"A. Ernesto Rhoda. (TSN, February 18, 1981, pp. 139-140)

Cross-examination of Felix Villaro

"Q.

What happened when Tripon Cabigas and Ernesto Rhoda arrived in the scene of the fight?

"A.

They held Arnold Babiera and Mario Eran went behind and then pulled and stabbed the other side here (witness indicating his back right side) and left the hunting knife sticking on the back of Arnold and he ran away." (TSN, February 18, 1981, pp. 146-147)

.....

"Q.

You are sure that Tripon Cabigas and Ernesto Rhoda arrived at the moment when Mario Eran was at a losing end in the wrestling between him and Arnold Babiera?

"A.

Yes, sir.

"Q.

And that moment that was the time when Tripon Cabigas and Ernesto Rhoda held the hands of Arnold Babiera?

"A.

Yes, sir.

"Q.

And when they did that, referring to Tripon Cabigas and Ernesto Rhoda, the wresting stopped?

"A.

Yes, sir. (TSN, February 18, 1981, p. 148)

.....

"Q.

Shortly thereafter that was the time Mario Eran surreptitiously went behind and stabbed Arnold Babiera twice?

"A.

Yes, sir. (TSN, February 18, 1981, p. 148)

Direct examination of Rizaldo Resurreccion

"Q.

You said that Arnold Babiera was slapped four times by Mario Eran, did Arnold Babiera do something when he was slapped?

"A.

He could not bear it so he embraced Mario Eran. (TSN, February 18, 1981, p. 157)

.....

COURT (to witness)

"Q.

What happened after Arnold embraced Mario?

"A.

When Arnold embraced Mario, Ernesto Rhoda and Tripon Cabigas came and immediately held Arnold." (TSN, February 18, 1981, p. 158)

.....

"Q.

Can you show us how the two held Arnold Babiera?

"A.

Like that. (witness stood up and extended his arms away from his body) and he was held here. (witness indicating his right and left upper arms).

"Q.

That time when the two hands or arms of Arnold Babiera were held where was Mario Eran?

"A.

Mario Eran suddenly went behind Arnold Babiera and stabbed Arnold Babiera twice at the back. (TSN, February 18, 1981, p. 159)

Cross-examination of Rizaldo Ressurreccion

"Q.

It was at this moment when Mario Eran was losing in that wrestling fight that Tripon Cabigas and Ernesto Rhoda took hold of the arms of Arnold Babiera?

"A.

Yes, sir. (TSN, February 18, 1981, p. 165)

.....

"Q.

Naturally, Tripon Cabigas and Ernesto Rhoda were concentrated on Arnold Babiera by holding him?

"A.

Yes, sir.

"Q.

It was at this moment that Mario Eran surreptitiously went behind Arnold Babiera and stabbed twice Arnold

Babiera?

"A.

Yes, sir.

"Q.

And after this all of them ran away?

"A.

Yes, sir. (TSN, February 18, 1981, pp. 165-166)

Conspiracy is evident from the manner the three defendants committed the crime. Thus, while the appellants did not approach Arnold Babiera at exactly the same time as Mario Eran, it is not disputed that appellants joined Eran and held the hands of Babiera while the latter was struggling with Mario Eran. They did this when Eran was being overcome by the victim, Babiera. Their joint action facilitated the stabbing of Arnold Babiera by their co-accused, Mario Eran. Clearly, the two appellants and Mario Eran mutually aided one other in killing Arnold Babiera. If it is proved that two or more persons aimed, by their acts, at the accomplishment of some unlawful purpose, each doing a part, so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and concurrence of criminal purpose, conspiracy may be inferred although no actual meeting between them to commit the crime in question is proved. (*People v. Quindo*, 95 SCRA 553).

We agree with the appellee that the appellants and Mario Eran acted in concert toward the same objective—the triumph of Eran over victim Arnold Babiera in the fight of the two.

The appellants tried to justify their action by alleging that it was their intention to separate the two and stop a one-sided fight rather than to do harm to the deceased. This argument deserves scant consideration. The records show that it was only Babiera whom the appellants held. If it was really the honest intention of the appellants to separate Eran and Babiera, one of them should have held Mario Eran also to prevent him from continuing the fight and stabbing Babiera once in the left side of the body and again, after circling to the rear, stabbing the victim in the back. The appellants argue that Eran never called to them for help. They also state that the implications drawn by the lower court from Cabigas' possession of a revolver are absurd and self-defeating. We do not think so. There was no need to call for help. The three had the same purpose and objective. We agree with the lower court that Cabigas armed himself with a revolver because he was prepared for any eventuality. The three were able to dispose of their victim with confidence. There was no need to use the gun under the facts of the case.

With respect to the second assignment of error, appellants submit that (1) it was odd that the companions of the victim, Villaro and Resurreccion, remained rooted to the spot from the inception of the fight until its culmination without so much as trying to pacify the protagonists or separate them; (2) it was inherently improbable that the precursor of the incident was the act of Eran slapping Babiera's face four times without any word coming from either of them; (3) stranger still was their inaction when they saw appellants intervening in the fight seemingly to side with Eran, and (4) quite unusually, they did not even shout a warning to their friend Babiera when they noticed that Eran was going around the former with a knife in his hand or, for that matter, rush Eran and try to prevent him from using it.

We agree with the Solicitor-General that the apparent inaction of Villaro and Resurreccion who did not enter the fray on the side of Babiera cannot be considered as abnormal. Resurreccion was 15 years old and Villaro, 16 years old when their testimonies were given in court. There is nothing unusual for two young boys to avoid being

involved in trouble and getting hurt. More so when they saw Eran stabbing Babiera with a knife while the two appellants were holding the latter's hands. The fact that there is nothing in the record to show whether or not Villaro and/or Resurreccion shouted a warning to Babiera when Eran went around the victim with a knife in hand, cannot be taken against the credibility of said witnesses.

Relative to the third assignment of error, the appellants contend that the stabbing of Babiera by Eran was but a mere continuation of the fist fight they had in which they had exchanged blows with no appreciable time intervening between the delivery of fist blows and the stabbing and, therefore, there was no treachery attendant to the crime. The trial court did not err.

The crime committed was qualified by treachery. Treachery exists when the offender employs means, methods or forms which tend directly and specially to insure the execution of the offense without risk to the accused arising from the defense which the offended party might make (Art. 14, Par. 16, Revised Penal Code). The concurrence of the two conditions necessary for treachery to exist are present in this case, namely: (1) the employment of means, methods, or manner of execution which would insure the offender's safety from any defensive or any retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and (2) such means, method, or manner of execution was deliberately or consciously chosen (People v. Macariola, G.R. No. L-40757, January 24, 1983).

The appellants' holding the hands of Arnold Babiera insured the commission of the offense without risk to the accused. The victim was immobilized and prevented from parrying the knife thrusts of Mario Eran. The risk to Mario Eran and the appellants ceased from the moment the appellants held the hands of the victim. The victim was in no position to retaliate. He was unarmed and completely defenseless.

The evidence, however, does not support a finding of the existence of abuse of superior strength. We agree that abuse of superiority cannot be appreciated separately from treachery (People v. Gonzales, 99 SCRA 697).

In their fourth assignment of error, the appellants submit that the trial court should have appreciated in favor of appellant Rhoda the mitigating circumstance of voluntary surrender.

The trial court itself found and stated that:

"Rather significant is the fact that on February 11, 1981, Ernesto Rhoda surrendered himself to the Police."
(Decision, p. 5)

The Solicitor-General concurs that the lower court erred in not appreciating the mitigating circumstance of voluntary surrender in favor of appellant Rhoda. The contention of the appellants is well taken.

WHEREFORE, the judgment appealed from is MODIFIED in that appellant Ernesto Rhoda is found guilty of the crime of MURDER with the mitigating circumstance of voluntary surrender and the penalty of imprisonment for Rhoda is accordingly reduced to an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of PRISION MAYOR as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL as maximum. The judgment is AFFIRMED in all other respects.

SO ORDERED.

Teehankee (Chairman), Plana, Vasquez and Relova, JJ., concur.
Melencio-Herrera, J., took no part.

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